The H-1B Work Visa
History, Loopholes and Scapegoats

Norm Matloff
University of California at Davis

Dept. of Labor OFCCP Training Session

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URL for these slides (repeated on final slide):
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- **The Infosyses**: "Rent-a-programmer" firms, mostly based in India. One of the biggest is Infosys.
- **The Intels**: Mainstream U.S. firms. I will typify them as the "Intels," but I basically mean any U.S. firm hiring tech H-1Bs.

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- **Scapegoating**
  The Infosyses are no angels, but they are being unfairly scapegoated.
Typically designated as H-1B-dependent employers, meaning that 15% or more of their workforce are H-1Bs. Thus have extra rules; must give Americans hiring priority. Exemptions for workers paid over $60,000 or have Master's. Hire their foreign workers mainly from abroad. Also heavy users of L-1 intracompany transfer visa. Fallback if fail to get H-1B visa. Rarely sponsor workers for green cards.
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Rarely sponsor workers for green cards. (Not a problem from my point of view; for informational use only.)
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• Typically they hire their H-1Bs from the pool of foreign students at U.S. universities.
• Employers try to get those foreign graduates H-1B visas.
• Again, fallback is L-1. Send worker to a foreign branch of the firm for a year, then L-1 in U.S.
• Another fallback is Optional Practical Training, part of the F-1 student visa.
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This is false. The abuse of H-1B pervades the entire industry.

The hiring of H-1Bs as foreign students at U.S. universities has just as much adverse impact on U.S. citizen/permanent resident workers as does the Infosyses' direct hiring from abroad.
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History

• Early 1990s: H-1B program is enacted in 1990, emphasis on remedying labor shortages.
• Replaces the old H-1 visa, which had emphasized bringing in outstanding talents.
• Quickly comes under fire, including from Sec. of Labor Robert Reich.
• 60 Minutes expose' of H-P, 1993.
• Capped at 65,000/yr.
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History, cont’d.

1998:
• Tech boom, industry claims dire labor shortage.
• Despite White House skepticism, cap temp. raised to 115,000.
• H-1B-dependent employers restriction imposed, aimed at the Infosyses. — first instance of scapegoating.
• Congress commissions NRC to study claims of labor shortage, age discrimination.

2000:
• Again strident industry claim of a dire labor shortage.
• Congress enacts further increase to 195,000/yr in 2000 — just weeks before tech stocks tank, Dot Com Bust begins.
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  - Today almost no one in Congress, including staffers, are aware of that report.
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  - Finds that older tech workers had trouble finding work, even during Dot Com Boom.

• 2003:
  - Cap reverts to 65,000.

• 2004:
  - Again under political pressure, Congress further makes H-1B industry-friendly.
  - Replaces the old 2-tiered prevailing wage rule by a 4-tiered one.
  - New Level I has lower wage than old Level I.
  - H-1B employers now can pay even less.
  - For the Intels, added a special 20,000-visa category for foreign students with MS/PhD degrees.
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Is There a Tech Labor Shortage?

• Numerous studies: NRC, CRA, EPI, DoC, etc.
• NO study, other than ones sponsored by the industry, has shown a shortage.
• Common sense: Wages basically flat (see OES data), so no shortage.
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What Is Attractive to Employers?

No tech labor shortage, what then is so attractive to tech employers about the foreign-worker programs?

• Reduced labor costs: attractive to all employers.
  • Type I: Foreign workers cost less than Americans of the same age, education and so on.
  • Type II: Younger foreign workers cost less than older Americans.

This really is the crux of the H-1B problem with the Intels.

• Immobile workers, especially under green card sponsorship.
  • Especially attractive to the Intels: Engineers can't jump ship in the midst of an urgent project.

• Hugely beneficial to employers.
  • Google admits it.
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Loopholes

- Lack of effective U.S.-recruitment requirements.
- Except H-1B-dep. employers, H-1B has NO recruitment requirement.
- Green card sponsorship requires it, but easily circumvented.
- Prevailing Wage requirements.
  - Wage tied to the job, not the worker.
  - E.g. get a Master's H-1B for the price of a Bachelor's.
  - Does not account for "hot" skill sets, which cost a premium of 20% or more in the open market.
  - Multi-tiered system makes young H-1Bs cheaper than older (35+) Americans — thus codifying age discrimination.
  - Employer must pay max(Prevailing Wage, Actual Wage) but if all or most workers are foreign AW is meaningless.
- Playing games with job titles.
- Wages for Programmers less than for Software Engineers, in spite of doing the same work.
- Novel new titles, e.g. Junior Software Engineer (HP).
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  - Multi-tiered system makes young H-1Bs cheaper than older (35+) Americans — thus codifying age discrimination.
  - Employer must pay max(Prevailing Wage, Actual Wage) but if all or most workers are foreign AW is meaningless.

- Playing games with job titles.
  - Wages for Programmers less than for Software Engineers, in spite of doing the same work.
  - Novel new titles, e.g. Junior Software Engineer (HP).
Intels Just As Culpable as the Infosyses
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  • Intel Inside, Tim Jackson, 1998.
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  - Google admitted this in 2012 meeting with researchers.
  - Immobility enables wage exploitation.
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- There are plenty of U.S. citizens, permanent residents who could do this work.
For More Information
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- These slides: http://heather.cs.ucdavis.edu/OFCCP.pdf
- Some of my research papers:
  http://heather.cs.ucdavis.edu/Mich.pdf,
  http://heather.cs.ucdavis.edu/MigLtrs.pdf,
- My blog: normsaysno.wordpress.com